

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

LORENZO HERRERA,

Defendant and Appellant.

F076854

(Super. Ct. No. MCR057692A)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Madera County. Ernest J. LiCalsi, Judge.

Jared G. Coleman, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen and Ross K. Naughton, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

---

\* Before Detjen, Acting P.J., Peña, J. and DeSantos, J.

Defendant Lorenzo Herrera was convicted by guilty plea of receiving a stolen vehicle. On appeal, he contends the trial court abused its discretion when it denied his request to dismiss his prior felony conviction allegation. We affirm.

### **PROCEDURAL SUMMARY**

On October 13, 2017, a search warrant was executed at a residence in Madera. The suspects in the warrant were defendant and his son. When officers arrived, both suspects were in the driveway standing next to a black Lincoln vehicle. The suspects were detained while the residence was searched. Officers located a white Lincoln in the backyard, which the officers determined was stolen. It had been stripped of the engine and the interior; all that was left of the vehicle was the frame and some wires. Parts of the vehicle were found in the backyard and garage.

The son told officers he did not know anything about the stolen vehicle. He said his fingerprints would be on the outside of the vehicle and on the engine. He said they had “scrapped” the vehicle.

Defendant told officers he was going to buy the white Lincoln. But when he returned to pay for it, no one was around, so he decided to take it. He said he lifted the drive shaft and pulled the vehicle to his residence. His son knew it was stolen, but he did not help transport it. Defendant said he planned to take the transmission out because he needed a new one. He said he stripped the transmission and someone else stripped the rest of the vehicle. In the garage, he pointed to parts that had come from the stolen vehicle.

On November 8, 2017, defendant pled guilty to receiving a stolen vehicle (Pen. Code, § 496d, subd. (a))<sup>1</sup> and admitted having suffered a prior felony “strike” conviction within the meaning of the “Three Strikes” law (§§ 667, subds. (b)–(i), 1170.12,

---

<sup>1</sup> All statutory references are to the Penal Code unless otherwise noted.

subds. (a)–(d)), a 1990 conviction for lewd and lascivious act upon a child under the age of 14 (§ 288, subd. (a)).

On January 4, 2018, the trial court denied defendant’s *Romero*<sup>2</sup> motion requesting that the trial court dismiss his prior strike conviction. The court sentenced defendant to prison for the low term of 16 months, doubled to 32 months pursuant to the Three Strikes law.

On January 8, 2018, defendant filed a notice of appeal.

### **DISCUSSION**

Section 1385 grants a trial court the discretion to dismiss a prior strike conviction allegation if the dismissal is in furtherance of justice. (§ 1385, subd. (a); *Romero, supra*, 13 Cal.4th at pp. 529–530.) But the court’s discretion is limited, and its exercise must strictly comply with section 1385, subdivision (a). (*People v. Williams* (1998) 17 Cal.4th 148, 158.) The Three Strikes law “was intended to restrict courts’ discretion in sentencing repeat offenders.” (*Romero, supra*, at p. 528; *People v. Garcia* (1999) 20 Cal.4th 490, 501 [“a primary purpose of the Three Strikes law was to restrict judicial discretion”].) The Three Strikes law establishes “ ‘a sentencing requirement to be applied in every case where the defendant has at least one qualifying strike [conviction],’ ” *unless* the sentencing court finds a reason for making an exception to this rule. (*People v. Carmony* (2004) 33 Cal.4th 367, 377 (*Carmony*)). There are “stringent standards that sentencing courts must follow in order to find such an exception.” (*Ibid.*) “[T]he court in question must consider whether, in light of the nature and circumstances of [the defendant’s] present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he

---

<sup>2</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

had not previously been convicted of one or more serious and/or violent felonies.”

(*People v. Williams, supra*, at p. 161.)

The defendant bears the burden of clearly showing the trial court’s decision not to dismiss a prior strike conviction allegation was arbitrary or irrational. Absent such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives. (*Carmony, supra*, 33 Cal.4th at pp. 376–377.) “[A] trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances. For example, an abuse of discretion occurs where the trial court was not ‘aware of its discretion’ to dismiss [citation], or where the court considered impermissible factors in declining to dismiss [citation]. Moreover, ‘the sentencing norms [established by the Three Strikes law may, as a matter of law,] produce [] an “arbitrary, capricious or patently absurd” result’ under the specific facts of a particular case. [Citation.] [¶] But ‘[i]t is not enough to show that reasonable people might disagree about whether to strike one or more’ prior conviction allegations. [Citation.] ... Because the circumstances must be ‘extraordinary ... by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack’ [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary. Of course, in such an extraordinary case—where the relevant factors ... manifestly support the striking of a prior conviction and no reasonable minds could differ—the failure to strike would constitute an abuse of discretion.” (*Id.* at p. 378.)

In this case, defendant’s criminal conviction history began in 1984 at age 22 and included the following convictions: In 1984 he was convicted of possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)), for which he received three years’ probation with five months in jail; in 1986, he was convicted of

misdemeanor failure to report to a work release program (§ 4024.2, subd. (b)), for which he received jail time; in 1988, he was convicted of three counts of misdemeanor being under the influence of a controlled substance (Health & Saf. Code, § 11550), for which he received 90 days in jail each; in 1990, he was convicted of lewd or lascivious act upon a child under the age of 14 (the basis for the prior strike conviction) (§ 288 subd. (a)), for which he received three years in prison; in 1997, he violated parole and was returned to prison; in 2003, he was convicted of check fraud (§ 476), for which he received two years in prison; in 2004, he was convicted of possession of a controlled substance for sale (Health & Saf. Code, § 11351), for which he received four years in prison pursuant to the Three Strikes law (he was also resentenced to eight consecutive months on the 2003 check fraud conviction); between 2008 and 2010, he violated parole four times and was returned to prison each time; and in 2017, the current case, he was convicted of receiving a stolen vehicle, a crime he committed with his son, for which he received 32 months in prison pursuant to the Three Strikes law.

The probation officer's report concluded:

“The defendant appears before the Court for sentencing after having pled guilty to a felony violation of Penal Code Section 496d[, subdivision ](a) and after admitting a Special Allegation in violation of Penal Code Section 667[, subdivisions ](b)–(i) in Case MCR057692A. His prior Strike offense pertains to a felony violation of Penal Code Section 288[, subdivision ](a). His prior record is significant, dating back to 1984. Due to his lengthy history of criminality, he sustained four prior felony convictions and was sentenced to state prison on three occasions. Further, his prior performance on parole has been unsatisfactory as evidenced by his receipt of violations and his return to prison commitments.

“Pursuant to Penal Code Section 667[, subdivision ](c)(2), he is statutorily ineligible for probation. Factors in aggravation preponderate and support imposition of the aggravated term of six years state prison. However, his conditional plea agreement indicates he is to receive no more than the mitigated term of thirty-two months [in] state prison pursuant to Penal Code Section 667[, subdivision ](e)(1). Therefore, per the

defendant's ongoing criminality and statutory ineligibility for probation, the following is respectfully submitted."

Defendant's *Romero* motion argued that (1) his 1990 strike conviction was remote in time; (2) since the 1990 strike conviction, he had not suffered any other sexual convictions and thus had been rehabilitated with regard to sexual misconduct; (3) since the 1990 strike conviction, he had worked hard to support his family; and (4) since his release from prison, he had worked to maintain his sobriety and claimed to have been sober since 2007.

The prosecutor's opposition argued that defendant had been convicted of four felonies, and he had repeatedly violated the law and refused to comply with parole requirements. While he had no convictions or violations after 2010 until the current offense, his criminal history and repeated failures to learn from his mistakes placed him squarely within the spirit of the Three Strikes law. The opposition argued that (1) the current offense was not de minimis because it involved concealing and destroying another person's property; (2) although the prior strike conviction was remote in time, defendant violated parole on that conviction and committed a new felony offense not long after the violation; (3) defendant's most recent criminal conviction was in 2004, but following his release from custody, he was returned to prison four times for violating parole; and (4) defendant served three prison terms and violated parole every time he was released on parole.

At the sentencing hearing, the following occurred:

"[DEFENSE COUNSEL]: [T]he [section] 288 is really old, about 27 years old, and he hasn't had any similar conduct since that time. He did re-offend and have a felony conviction in 2000, and it was primarily because he had a drug problem, and sought help for that, and hasn't had any new charges for drugs. [¶] Therefore, we're asking the Court to exercise discretion to strike his prior strike. He also has a family. He loves them, supports them. One of the reasons he took responsibility for this is because he wanted his son to get out of custody. He works. And his wife is here too, and she also wrote a letter to the Court. So we're asking the Court to strike the strike.

“THE COURT: [Prosecutor]?

“[PROSECUTOR]: Yes, Your Honor. Most of my points are in the People’s response to the motion. The fact is, the defendant did continue to re-offend after his strike. He picked up two further felony convictions, and then, following his last felony conviction at his parole, violated four separate times. I’m not—I don’t believe the interest of justice would be served by striking the strike in this case, but the People submit further on our moving papers.

“THE COURT: I agree with [the prosecutor]. I don’t think the interest of justice would be served by striking the serious felony. It would appear that he kept violating parole, the last time, until parole finally expired. This case involves a certain amount of sophistication and planning, and he did involve his own son in it. So I don’t see where the interest of justice would require the striking [of] the serious felony, and the Court denies the motion.”

In our opinion, this is not an extraordinary case in which all reasonable people would agree that defendant falls outside the spirit of the Three Strikes law. (See *Carmony, supra*, 33 Cal.4th at p. 378.) Defendant’s record supports the conclusion that he was almost constantly involved with the criminal justice system from 1984 until after 2010. In 2017, he stole a vehicle because he needed a new transmission, and he involved his son in the crime. Although the 1990 strike conviction was remote, defendant committed two more felonies and repeatedly returned to prison on parole violations. In other words, after the remote strike conviction, he did not lead an otherwise crime-free life. (See *People v. Humphrey* (1997) 58 Cal.App.4th 809, 813 [“remote” carries the connotation of a crime-free cleansing period of rehabilitation after a defendant has had the opportunity to reflect on the error of his ways].) His performance on parole was abysmal and his record, despite the gap between the 2010 conviction and the current one, does not establish a trend toward rehabilitation. We see no extraordinary circumstances that remove defendant from the spirit of the Three Strikes scheme he fell into when he committed the strike offense as part of a long criminal career. In sum, defendant has not

shown that the trial court's decision not to dismiss the prior strike conviction allegation was arbitrary or irrational. We cannot say the trial court abused its discretion.

**DISPOSITION**

The judgment is affirmed.